



UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
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JUN 28 2004

Paper No. 14

In re Application of
Cody Lambert
Application No. 09/922,529
Filed: December 11, 2001
For: Telescopic Universal
Bed Rack

:
: DECISION ON
: RENEWED PETITION
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This is a decision on the renewed petition filed on June 3, 2004 by which petitioner again requests withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated August 20, 2003. The renewed petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The renewed petition is dismissed.

Petitioner again alleges that a proper reply to the Office letter in question was timely filed on September 18, 2003 by United States Postal Service "Express Mail." Petitioner has now enclosed a copy of the material allegedly filed in response to the Office action in question. This material does **not** have affixed thereto an Express Mail Label Number.

Petitioner's attention is again invited to the following Federal regulation governing the filing of correspondence with the Office by "Express Mail", which reads in pertinent part:

37 CFR 1.10. Filing of correspondence by "Express Mail".

(a) Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

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(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in", a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the

requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question. (Emphasis supplied.)

In the absence of an Express Mail Label Number affixed to the papers alleged to have been filed on September 16, 2003, it is impossible to rely upon the evidence offered by petitioner in the form of tracking information from the United States Postal Service because there is no evidence linking this tracking information to the specific material that is alleged to have been filed. Petitioner should note the emphasized material in the Federal Regulation supplied above; this requirement exists so that it would be possible to link USPS tracking information to specific correspondence. Without compliance with this requirement, petitioner cannot rely upon the "Express Mail" practice to establish a filing date for correspondence.

Petitioner may file a renewed petition, without fee. The renewed petition must include any evidence that petitioner has that would associate the tracking information from the USPS with the particular document that is alleged to have been filed on September 16, 2003. Absent such evidence, it would appear that petitioner's recourse is to file a petition to revive this application.

A petition to revive may be appropriate if applicant's failure to respond or to timely respond was either unavoidable or unintentional, as set forth below.

A. Failure to respond was unavoidable.

A petition to revive an abandoned application on the grounds that the failure to respond was unavoidable (37 CFR 1.137(a)) must be accompanied by a showing that the entire delay in filing the required reply from the due date thereof until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable delay, by a proposed reply, and by the petition fee of \$ 55.00. No consideration to the substance of a petition will be given until this fee is received.

B. Failure to respond was unintentional.

A petition to revive an abandoned application on the grounds that the failure to respond was unintentional (37 CFR 1.137(b)) must be accompanied by a statement that the entire delay in filing the required reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, the required reply unless it has been previously filed, and the petition fee of \$ 665.00.

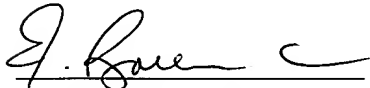
Correspondence with respect to a petition to revive should be sent in an envelope addressed to:

Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

Please address the contents of the letter to the Attention of the Office of Petitions.

The application is being returned to storage as an abandoned file, pending further action by petitioner.

RENEWED PETITION DISMISSED.

A handwritten signature in cursive script, appearing to read "E. Rollins-Cross", written over a horizontal line.

E. Rollins-Cross, Director
Technology Center 3700

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